

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>THOMAS E. WAMPLER</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 179,834 & 192,445
<b>THE BOEING CO. - WICHITA</b>	)	
Respondent	)	
AND	)	
	)	
<b>AETNA CASUALTY &amp; SURETY and AMERICAN</b>	)	
<b>MANUFACTURERS MUTUAL INSURANCE</b>	)	
<b>COMPANY</b>	)	
Insurance Carriers	)	
AND	)	
	)	
<b>WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Respondent and its insurance carriers requested review of the Award dated July 12, 1996, entered by Administrative Law Judge John D. Clark. The Appeals Board heard oral argument in Wichita, Kansas, on January 8, 1997.

**APPEARANCES**

Claimant appeared by his attorney, Stephen J. Jones of Wichita, Kansas. Respondent and its insurance carriers appeared by their attorney, Eric K. Kuhn of Wichita, Kansas. The Workers Compensation Fund appeared by its attorney, E. Thomas Pyle, III, of Hutchinson, Kansas.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

**ISSUES**

In Docket No. 179,834 the Administrative Law Judge found that claimant abandoned his request for benefits. Neither claimant nor the other parties appealed that finding. In Docket No. 192,445 the Administrative Law Judge awarded claimant permanent partial disability benefits for a 28.5 percent work disability. Because the Administrative Law Judge denied respondent's request to assess liability against the Workers Compensation Fund, the respondent and its insurance carriers requested the Appeals Board to review that issue. Fund liability is the only issue before the Appeals Board on this review.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds as follows:

The Administrative Law Judge's finding that the entire award should be assessed against the respondent and its insurance carriers should be affirmed.

Claimant developed bilateral carpal tunnel syndrome while working for the respondent. Although claimant experienced upper extremity problems in either 1987 or 1988 while performing sheet metal work, those problems seemed to resolve when claimant was transferred out of sheet metal into tooling. However, in early 1993 claimant again began experiencing problems with his arms and sought medical treatment from his private physician. In June 1993, after undergoing nerve conduction tests, claimant was diagnosed with mild moderate carpal tunnel syndrome on the right and early carpal tunnel syndrome on the left.

According to respondent's in-house physician, Kenneth D. Zimmerman, M.D., claimant reported to Boeing Central Medical on June 17, 1993, with upper extremity complaints. The medical records indicate an arm brace and physical therapy were recommended.

After June 1993, claimant continued to work without restrictions and without medical treatment until he returned to Boeing Central Medical on October 1, 1993, with right arm complaints. At that time respondent referred claimant to Harry A. Morris, M.D., for treatment. Dr. Morris prescribed physical therapy and in December 1993 released claimant to return to work without restrictions and without issuing any type of functional impairment rating. After that release claimant returned to work for respondent and performed his regular job duties until May 5, 1994, when he again returned to Central Medical with bilateral hand complaints. Respondent referred claimant to Robert G. Clark, M.D., who performed bilateral carpal tunnel release surgery.

After recovering from surgery, claimant returned to work for respondent for approximately two weeks in August 1994. On October 29, 1994, respondent officially placed claimant on medical layoff. No claim is made that claimant sustained additional injury during the brief period that he returned to work in August 1994 after his surgeries.

Based upon the above facts, the Appeals Board finds that claimant sustained one continuous accident commencing early 1993 and culminating May 5, 1994, when he was taken off work before his eventual surgeries. The Appeals Board also finds that before the period of injury began claimant did not have an impairment which constituted a handicap in obtaining or retaining employment. Likewise, before 1993 respondent did not have knowledge of any condition or impairment which constituted such a handicap. In fact, as late as December 1993, claimant was released to work without restrictions by both then-treating physician Dr. Morris and Boeing Central Medical. Claimant was not given permanent medical restrictions until after his bilateral carpal tunnel release surgeries in the summer of 1994.

Under K.S.A. 44-567, before they can recover from the Workers Compensation Fund the respondent and its insurance carriers must prove claimant had an impairment which constituted a handicap in obtaining or retaining employment and, in addition, the respondent either had knowledge of the impairment before the accidental injury began in early 1993 or the claimant knowingly made certain misrepresentations regarding that impairment. Because those facts have not been proven, the Workers Compensation Fund has no liability in this proceeding.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award dated July 12, 1996, entered by Administrative Law Judge John D. Clark should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Stephen J. Jones, Wichita, KS  
Eric K. Kuhn, Wichita, KS  
E. Thomas Pyle, III, Hutchinson, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director